

# Protection of Human Rights in Europe: Part Two

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‘we have to invest in preventing the conflicts of tomorrow, by sharing responsibility for the protection of human rights and the Rule of Law in Europe’ - Jolien Schukking

## Class Summary:

When discussing the protection of human rights there are three main components that must be considered:

1. **The need for the protection of human rights:** The traditional framework within which human rights protections can be found is in their national constitutional. Within the national constitutional framework it prevents constitutional provisions which are in contravention of the application of EU law. Only way to maintain protection is to ensure that national constitutions do not contravene. The Charter of Fundamental Rights states in its preamble: *the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.*
2. **The judicial protection of human rights:** The source of protection can be found in the general principles, common constitutional traditions, and international treaties which
3. **The structure of protection of human rights:** The protection of human rights by the Charter and the Convention and the respective Courts which hear those complaints.

The protection of human rights according to the principle of *sui generis* EU level norms need to be applied with a priority over national ones. EU level norms need to be applied with a priority over national legal system, due to direct effect primacy. The fundamental human rights enshrined in the general principles of Community law are protected by the Court of Justice of the European Union (CJEU).

Constitutional traditions common to Member States, requires a respect for fundamental rights forms an integral part of the general principles of law protected by the CJEU. The protection of such

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rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community.

International treaties for the protection of human rights on which Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law. With regards to the protection of human rights in EU we can talk about two structures the Maasticht and the Lisbon structure. Both of these structures work to establish the effective protection of human rights. One of the consequences of the Lisbon strucute is that the Charter is now given the same legal value as treaties and it is answerable in the CJEU. The ECHR established an everlasting accession and within the general principles the same sources of inspiration can be found and the control is overseen by the CJEU. Constant dialogue is needed between the national constitutional courts and the CJEU when it comes to the effective implementation and interpretation of human rights within the European Union.

The EU has its own legal system to ensure effectiveness of norms the CJEU states that the EU is a new branch of International law and sui generis. Also norms are to be applied directly as national law and that EU is not sovereign but not limited in its constitutional interpretation. In the constitutional framework no guarantee of complementarity. When there is a conflict: the EU legal norm should be applied. The same principle applies where the national norm has a constitutional nature.

### *Reading Task*

Please click on the hyperlink to access the required reading

1. **The Treaty of Lisbon and Fundamental Rights**
2. **The Role of the Court of Justice of the European Union in the Development of the Common Foreign and Security Policy after The Treaty of Lisbon**

### *Self-Check Questions*

1. In what way does the Treaty of Lisbon change the relationship of the CJEU with human rights in Europe?
2. Both the United Kingdom and Poland have opt-outs when it comes the Charter of Fundamental Rights: *“Article 1 1. The Charter does not extend the ability of the Court of Justice of the Euro-*



*pean Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms. 2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law. Article 2 To the extent that a provision of the Charter refers to national law and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practice of Poland or of the United Kingdom".* How does this impact upon and what repercussions can be felt by these opt-outs. Discuss

3. What impact did the amendment made by the Treaty of Lisbon have upon Article 6 of the Treaty of the European Union to the protection of human rights?

### *Definitions/Key Terminology*

- Treaty
- Charter
- Constitutional traditions
- Framework
- Community
- Legal norm
- Principle
- Sui generis

